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VIA ELECTRONIC FILING

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Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Dear Ms. Brown:

This refers to STB Finance Docket No. 35459, V&S Railway, LLC—Petition for Declaratory Order—Railroad Operation in Hutchinson, Kansas, and to the letter Reply of Hutchinson Salt Company, Inc. ("HSC"), Hutchinson Transportation Company, Inc. ("HTC") and BNSF Railway Company ("BNSF"), filed February 7, 2011, to the Petition for Leave to Intervene and File a Reply of the Association of Railway Museums, Inc. ("ARM") and the Tourist Railroad Association, Inc. ("TRAIN"), filed January 18, 2011.

In their letter HSC, HTC and BNSF intimate that they intend to reply to the Petition for Declaratory Order, filed by V&S Railway, LLC ("V&S"), six weeks ago, on December 28, 2010.

HSC, HTC and BNSF have forfeited their right to reply to the V&S' Petition for Declaratory Order. The Board's rule, 49 C.F.R. §1104.13(a), is explicit in stating, "A party may file a reply or motion addressed to any pleading within 20 day after the pleading is filed with the Board, unless otherwise provided." HSC, HTC and BNSF did file a letter on January 18, 2010, 20 days after V&S' Petition for Declaratory Order had been filed, but their letter failed to offer a substantive reply to V&S' Petition for Declaratory Order.

The requirement that a reply to a pleading be filed within 20 days' time applies no less to petitions for declaratory order than it does to any other pleading. See, i.e., STB Finance Docket No. 35345, Philadelphia Belt Line Railroad Company—Petition for Declaratory Order, in which the petition was filed January 14, 2010, and the reply was filed February 3, 2010; STB Finance Docket No. 35316, Allied Erecting & Dismantling, Inc., et al.—Petition for Declaratory Order, in which the petition was filed November 2, 2009, and the reply was filed November 23, 2009; STB Finance Docket No. 35305,

Arkansas Electric Cooperative Corporation—Petition for Declaratory Order, in which the petition was filed October 2, 2009, and the reply was filed October 21, 2009.

HSC, HTC and BNSF's failure to file a timely reply to V&S's Petition for Declaratory Order is particularly inexcusable since they were the defendants in Case No. 08-1402-WEB, V&S Railway, LLC v. Hutchison Salt Company, Inc., Hutchinson Transportation Company, Inc. and BNSF Railway Company, before the United States District Court for the District of Kansas, and were served with the Court's Memorandum and Order, dated December 17, 2010, and filed December 20, 2010, a copy of which was attached to V&S' Petition for Declaratory Order as Exhibit A.

In its Memorandum and Order the Court posed three questions within the competence of the Board which it wished answered by the Board, and the Court specifically directed V&S to request the expeditious handling of its Petition for Declaratory Order.

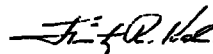
A copy of V&S' Petition for Declaratory Order was served on December 28, 2010, on HSC, HTC and BNSF by e-mailing a copy of the petition to their counsel, Terry L. Malone, Esq., at tlmalone@martinpringle.com. Thus, HSC, HTC and BNSF knew that they were respondents in the declaratory order proceeding and that the United States District Court for the District of Kansas wanted the declaratory order proceeding handled expeditiously by the Board, and yet they failed to file a substantive reply when it was due on January 18, 2011.

The Memorandum and Order of the United States District Court for the District of Kansas recites all of the evidence that the Board needs to answer the three questions posed by the Court, and the Board should not further delay providing the Court with the requested answers.

Pursuant to 28 U.S.C. §1336(b), the United States District Court for the District of Kansas will have exclusive jurisdiction to review the Board's decision answering the three questions posed by the Court, and HSC, HTC and BNSF will have ample opportunity to file a motion or other pleading before the Court to set aside the Board's decision upon whatever grounds they elect to assert.

This letter is being served upon HSC, HTC and BNSF by e-mailing a copy to ed.fishman@klgates.com and on ARM and TRAIN by e-mailing a copy to RobertTOpal@aol.com.

Sincerely yours,


Fritz R. Kahn

cc: Edward L. Fishman, Esq.
Robert T. Opal, Esq.